

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 63032-6-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
AREEWA SARAY,)	
)	
Appellant.)	FILED: March 8, 2010

Grosse, J. — Evidence of a defendant’s demeanor is relevant when it reveals a consciousness of guilt or that the defendant’s claim lacks honesty. Here, the trial court did not abuse its discretion by admitting testimony describing Areewa Saray’s behavior during a police interrogation when it demonstrated that he did not take the charges seriously and bore on the credibility of his statements. Accordingly, we affirm.

FACTS

In July 2007, Linda Nguyen and Kevin Meas lived in a house on Dexter Avenue, Everett, that was rented by Ngoc Nguyen.¹ The house was owned by Vo Van Tran. Linda and Meas worked for Ngoc by tending to her marijuana grow operation in the basement of the Dexter Avenue house. Ngoc also had a marijuana grow operation at another house she rented on Beech Street, where Linda’s brother Hai Nguyen and Hai’s girlfriend Natalie Nguyen lived and worked for Ngoc.

On July 2, 2007 around 8:45 p.m., Tran and his wife arrived at the Dexter Street

¹ To avoid confusion, witnesses with the last name of “Nguyen” will be referred to by their first names.

house to collect rent from Ngoc. When they arrived, they saw a light-colored Honda Accord parked near the front of the house. As they walked up to the door, Tran heard noises coming from inside the house that sounded like a nail gun firing. The front door was open and when they looked inside, they saw a woman's body lying motionless on the floor. The woman was later identified as Linda.

Two young Asian men brandishing handguns then suddenly appeared and ran toward Tran. One stopped, pointed his weapon at Tran and commanded, "Go, go." The couple immediately fled and drove away. After driving about a block, they saw the Accord speeding behind them. Tran feared they were being chased and pulled into a nearby residential driveway. The Accord sped past and they did not see it again.

Tran then called Ngoc and told her something was wrong at the Dexter Street house. Ngoc called Hai and he drove by the house. He reported that he observed nothing unusual, but he did not actually stop at the house. After a second call from Ngoc, Hai, Tam and "John," another associate of Ngoc, returned to the Dexter Street house. They saw the door ajar and Linda was on the floor, bleeding and unconscious.

Hai put Linda in the car, picked up Natalie and they attempted to find a hospital. They eventually pulled over and called 911. An off-duty police officer and an emergency medical technician assisted them until an ambulance arrived and took Linda to the hospital.

Detective Philip Erickson spoke with Hai and Natalie at the hospital. Hai told them that he found his sister in the Dexter Avenue house and thought that Meas might still be in the house. Detective Erickson then went to the house and found Meas dead,

lying at the bottom of the basement stairs.

Detective Erickson later spoke with Tran, who told him about the Honda Accord he saw at the house on the day of the murders. Detective Erickson was also aware of an incident involving a burnt Honda Accord that was found not far from the Dexter Street house. On the same day of the murders, police responded to an arson call that was approximately 1.6 miles from the Dexter Street house and found a gold colored 1991 Honda Accord that had been completely burned and was still smoking. A neighborhood resident said that she had seen a dark colored compact or subcompact car speed away from the fire. Further investigation revealed that the burnt Accord belonged to Phai Chum.

Detective Erickson then interviewed Chum. At the time of the murders, Chum shared an apartment with his cousin Saroeun Phai and was also close friends with the defendant, Areewa Saray. According to Chum, the three of them planned to rob a house in Everett that contained marijuana and money. Phai told Chum that the plan would include shooting the occupants of the house and Chum procured a gun at Phai's request. Initially the gun did not work, but Chum had it reassembled with parts from another gun and gave it to Phai. On the day of the murders, Chum refused to go along and Phai left without him, taking Chum's Honda Accord. Chum said that he saw Saray a few weeks later and that his eyebrows had been shaved off and he had a haircut. After the interview, Detective Erickson contacted and arrested Phai.

Police also spoke with Chum's cousin, Sopheap Phal, who was also friends with Saray. According to Phal, on the day of the murders, he was at his mother's house in

Federal Way when Phai and Saray drove up and told him they going to go up north and commit a robbery to obtain money and drugs. Sometime after midnight, the two returned to the Federal Way house and Phai told Phal that something was wrong. According to Phal, both Phai and Saray appeared scared and were shaking. Saray's eyebrows and some of the hair on his head appeared burned and he told Phal that he had burned Chum's Accord. He then asked Phal to shave his eyebrows and head. Phai and Saray also discussed their abilis; Phai was to claim that he had been at a casino and Saray was to have been at home.

At some point, Saray admitted to Phal that he and Phai had shot someone, but offered no further details. Phai eventually left and Saray asked Phal to drive him to a pier at the Federal Way waterfront. Phal drove him there and Saray dropped a handgun into the water.

A dive team searched the water near the pier and retrieved a partially loaded Glock magazine and two handguns: a revolver and a Glock semi-automatic. Forensic analysis determined that the revolver fired the bullets recovered from the victims' bodies. Saltwater corrosion prevented any specific handgun-to-bullet identification on the Glock, but further analysis revealed that it had been partially reconstructed from other weapons.

Police arrested Saray while serving a search warrant at his house. Saray was then taken to the police station, advised of his Miranda² rights and questioned by Detective Erickson. Saray denied knowing Phai and Chum and claimed he had not been to Everett for a long time. Throughout the questioning, Saray laughed, joked,

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

belched and audibly passed gas. When another officer arrived to transport Saray to the jail, he saw Saray emerge from the interview laughing and smiling. During the transport, Saray asked the officer why he was being arrested and when told it was for murder, he replied, “Oh, yeah, that’s right,” and continued to laugh throughout the drive to the jail.

Detective Erickson then met with Tran again and showed him a photomontage that included a picture of Phai, but Tran did not recognize anyone in that montage. He was also shown a montage with a picture of Saray. He identified Saray as the man who pointed the gun at him.

The State charged Saray with aggravated first degree murder for the deaths of Linda and Meas. Before trial, the State moved to admit evidence of both Saray’s statements and his behavior at the police interview, over defense objection. The court ultimately ruled evidence of both was admissible. The jury found Saray guilty as charged.

ANALYSIS

I. Evidence of Demeanor

Saray first contends that the trial court erred by admitting evidence of his demeanor during the police interview. He contends that this evidence was both irrelevant and unfairly prejudicial. We disagree.

We review a trial court’s rulings on relevance and its balancing of probative evidence against its prejudicial effect under the “manifest abuse of discretion” standard.³ Testimony of a defendant’s demeanor is not an opinion and is therefore

³ State v. Luvene, 127 Wn.2d 690, 706-07, 903 P.2d 960 (1995) (quoting State v.

admissible if it is relevant.⁴ Under ER 401, relevant evidence “means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” “The threshold to admit relevant evidence is low and even minimally relevant evidence is admissible.”⁵

The jury may consider as relevant and material evidence of a defendant’s conduct tending to reveal the defendant’s consciousness of his guilt or that the defendant’s claim lacks truth and honesty.⁶ In Day, the court held that testimony about the defendant’s statements and lack of emotion during a police interview was admissible and relevant non-opinion evidence.⁷ There, the trial court admitted testimony that the defendant showed no reaction when told of his wife’s death.⁸

Likewise, here, Saray’s behavior at the police interview was relevant because it revealed consciousness of his guilt. When informed he was charged with two murders, he laughed, joked and did not take the charges seriously. This is not conduct consistent with innocence and indicates he lacked truth and honesty during the interview. Nor did the trial court abuse its discretion by concluding that the relevance of this evidence was not outweighed by any unfair prejudice. Saray’s behavior at the interview was highly probative because it bore on the credibility of his statements

Russell, 125 Wn.2d 24, 78, 822 P.2d 747 (1994)).

⁴ State v. Day, 51 Wn. App. 544, 552, 754 P.2d 1021 (1988).

⁵ State v. Gregory, 158 Wn.2d 759, 835, 147 P.3d 1201 (2006).

⁶ State v. McGhee, 57 Wn. App. 457, 461, 788 P.2d 603 (1990) (citing State v. Kosanke, 23 Wn.2d 211, 215, 160 P.2d 541 (1945)).

⁷ 51 Wn. App. 544, 552, 754 P.2d 1021 (1988); see also State v. Craven, 69 Wn. App. 581, 586, 849 P.2d 681 (1993) (social worker’s testimony about defendant’s demeanor admissible).

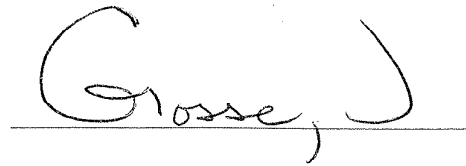
⁸ Day, 51 Wn. App. at 552.

denying that he knew Phai or Chum, both of whom were his direct links to the crime. And it was not unfairly prejudicial because this testimony described only the officers' observations and did not give an opinion, allowing the jury to draw its own inferences from the evidence.⁹ The trial court did not abuse its discretion by admitting this evidence.

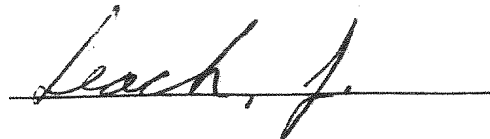
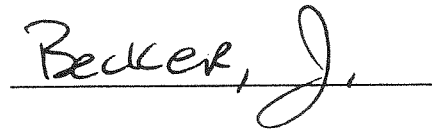
II. CrR 3.5 Findings and Conclusions

Saray further contends that remand is required for entry of written findings of fact and conclusions of law on the admissibility of his statements under CrR 3.5. But as the record establishes, written findings have since been entered and, as the State notes, they are consistent with the trial court's oral rulings. Remand is therefore unnecessary.

We affirm.

A handwritten signature in cursive script, reading "Grosse, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, reading "Leach, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Becker, J.", written over a horizontal line.

⁹ Indeed, the trial court consistently sustained objections to the prosecutor's questions about how the officers interpreted this behavior.